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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,337	09/30/2003	Bina R. Jennings	OC1797	5789

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EXAMINER

CHAPMAN, GINGER T

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/675,337	Applicant(s) JENNINGS, BINA R.	
	Examiner Ginger T. Chapman	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) 1-15, 18 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 16, 17 and 19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) 1-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/30/2003</u> | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- Group I. Claims 1-8, drawn to a kit including floss, an applicator and disinfectant, classified in class 427, subclass 2.29.
- Group II. Claims 9-15, drawn to an apparatus including floss, plural applicators, a cleaning substance and dispenser, classified in class 604, subclass 289.
- Group III. Claims 16-20, drawn to a kit including floss, plural applicators, sterilizer and dispenser, classified in class 132, subclass 308.

The inventions are distinct, each from the other because of the following reasons:

Inventions Group I and Group II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention kit has separate utility such as toilet kit including dental floss. See MPEP § 806.05(d).

Inventions Group I and Group III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention kit has separate utility such as dental floss dispenser. See MPEP § 806.05(d).

Inventions Group II and Group III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are

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shown to be separately usable. In the instant case, invention dispenser has separate utility such as toilet kit dental floss dispenser. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II or Group III, restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct species of the claimed invention:

1. Species 1: peroxide;
2. Species 2: antibiotic ointment;
3. Species 3: alcohol.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Mr. Ashkan Najafi on 19 October 2005 a provisional election was made without traverse to prosecute the invention of Group III, claim 19, species 2. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-15, 18 and 20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Specification

The disclosure is objected to because of the following informalities: p. 2, l. 1, the words: "pi rcing", "st ril " and "th " are missing characters.

Appropriate correction is required.

Claim Objections

Claim 16 is objected to because of the following informalities: line 1: missing character in the word, "pi rced". Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 16, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karos (US 4,497,402) in view of Petrus (US 5,954,682).

Claim 16. As seen in Figures 1, 3 and 5, Karos et al disclose a kit for cleaning pierced body parts (col. 1, l. 47) and comprising: a floss (14) formed to be flexible (col. 2, ll. 32-33) and including a plurality of perforations spaced along a length thereof and for assisting a user to separate said floss at said perforations (col. 3, ll. 50-57); a plurality of applicators (16); a sterilizing substance coated on said inner surface and being transferable onto said floss (col. 3, ll. 18-21) so that a pierced body part may be cleaned as said floss is passed therethrough (col. 2, ll.

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58-60); and a dispenser (52) for housing said floss and having an aperture (55) formed therein for allowing said floss (14) to be selectively removed therefrom (col. 3, l. 53).

Karos does not expressly teach the applicators formed with opposed end portions being open. Petrus, at column 3, ll. 5-6, expresses the desire for an applicator which allows for treatment of conditions within body cavities. As seen in Figure 1, Petrus teaches applicators (8) formed to be substantially tubular and having a cylindrical shape with opposed end portions being open and having substantially equal diameters (col. 4, ll. 38-39). Therefore, to form the applicator of Karos having open ends and a cylindrical shape as taught by Petrus would have been obvious to one of ordinary skill in the art at the time the invention was made, since Petrus states at column 4, ll. 58-60 that the advantage of forming the applicator with this design is that it allows ease of entry and withdrawal of the applicator into and from the body cavity.

Claim 17. Karos et al disclose a packaging (12) for housing the floss (14) therein (col. 2, ll. 46-47).

Claim 19. Petrus discloses sterilizing substance comprising antibiotic ointment (col. 8, l. 8).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Waters et al (US 56,358,221) discloses in Figure 1: a kit (9) for cleaning pierced body parts (col. 2, l. 56) having floss (2, 3, 4), applicator (1), sterilizing substance (6, 7, 8).

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Charatan (US 4,519,408) discloses in Figure 2 floss (18) and a hollow tubular applicator (12).

Although these references are relevant prior art, neither was used to reject any claims in the first Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 8:30 a.m. to 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ginger Chapman
Examiner, Art Unit 3761
10/20/05



TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

